

WEST VIRGINIA SECURITIES COMMISSION

STATEMENT OF POLICY

Options and Warrants

June 28, 2010

This Statement of Policy is adopted by the West Virginia Securities Commission pursuant to the authority of the Securities Commissioner of the State of West Virginia granted under Chapter 32 of the West Virginia Code. The West Virginia Securities Commissioner has determined that the following Statement of Policy relating to options and warrants is consistent with public investor protection and is in the public interest. The Commissioner may waive any requirement of this Statement of Policy for good cause, as he may determine.

I. APPLICATION

This statement of policy applies to all applications to register by coordination or by qualification.

II. DEFINITIONS

The terms used in this Statement of Policy are defined pursuant to the West Virginia Securities Commission Statement of Policy regarding Corporate Securities Definitions unless specifically stated otherwise within this Statement of Policy, or when the context clearly indicates otherwise.

III. PERMISSIBLE GRANTS OF OPTIONS OR WARRANTS

An issuer may issue options or warrants:

- A.** To unaffiliated institutional investors in connection with a loan if:
 - 1.** the options or warrants are issued at the same time as the loan;

2. the options or warrants are issued as the result of negotiations between the issuer and the unaffiliated institutional investor;
 3. the exercise price of the options or warrants is not less than the fair market value of the issuer's common stock or similar securities underlying the options or warrants on the date the loan was approved; and
 4. the number of shares that can be issued on exercise of the options or warrants multiplied by the options or warrants' exercise price does not exceed the face amount of the loan.
- B.** To underwriters as compensation in connection with a public offering if those options or warrants comply with the requirements of the West Virginia Securities Commission Statement of Policy regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses, and Selling Security Holders.
- C.** In connection with acquisitions, reorganizations, consolidations, or mergers, if:
1. the options or warrants are issued to persons that are unaffiliated with the issuer; and
 2. exercising the options or warrants will not materially dilute the issuer's earnings:
 - a. at the time of grant, and
 - b. after giving effect to the acquisition, reorganization, consolidation or merger.

IV. GENERAL PROHIBITIONS

- A. Limitation on Exercise Price.** An issuer may not grant options or warrants at an exercise price that is less than 85% of the fair market value of the issuer's underlying shares of common stock or similar securities on the date of grant. The issuer must demonstrate the underlying shares' fair market value to the Commissioner's satisfaction. The Commissioner may require the issuer to provide a

concurrent appraisal of the shares' fair market value from a qualified independent appraiser.

B. Limitations on the Total Number of Options or Warrants.

1. Fifteen Percent Limitation. For one year following the effective date of the offering, the total number of options and warrants that the issuer may issue or reserve for issuance may not exceed fifteen percent (15%) of the sum of the issuer's common stock outstanding at the date of the public offering plus:

- a. the number of firmly underwritten shares being offered, or
- b. the number of shares required to meet the minimum offering amount, if not firmly underwritten.

2. Exclusions. The calculation in section IV-B- 1 excludes options and warrants that:

- a. the issuer issued or reserved for issuance under section III,
- b. the issuer issued or reserved for issuance to employees or consultants who are not promoters under an incentive stock option plan under Section 422 of the Internal Revenue Code, or
- c. a person may exercise at or above the offering price for public investors.

3. Excess Options. If any options or warrants exceed the fifteen percent (15%) limit established in section IV-B- 1 ("Excess Options"), then the Commissioner may require the issuer to:

- a. cancel the excess options, or
- b. subject the excess options to a Lock-in Agreement consistent with the terms specified in section VI of the West Virginia Securities Commission Statement of Policy regarding Promotional Shares.

V. DISCLOSURE REQUIREMENTS

If the number of options and warrants that the issuer has issued and that remain outstanding or that the issuer has reserved for issuance is material, the issuer's prospectus must disclose the potential dilution of the options and warrants. The issuer's prospectus shall present this disclosure in accordance with Item 506 of Regulation S-K.

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities

June 28, 2010